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Attorneys for Defendants Carol Nelson and Stanley Nelson

**UNITED STATES BANKRUPTCY COURT
THE SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC

Plaintiff,

v.

CAROL NELSON, individually and as joint tenant, and
STANLEY NELSON, individually and as joint tenant,

Defendants.

Adv. Pro No. 10-04377 (SMB)

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC

Plaintiff,

v.

CAROL NELSON,

Defendant.

Adv. Pro No. 10-04658 (SMB)

**DECLARATION OF HELEN DAVIS CHAITMAN IN OPPOSITION TO THE
TRUSTEE'S EVIDENTIARY RULINGS IN HIS PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

HELEN DAVIS CHAITMAN DECLARES AS FOLLOWS:

1. I am a partner of Chaitman LLP, counsel for the Defendants, Carol and Stanley Nelson. I submit this declaration in connection with certain exhibits introduced at trial by Irving H. Picard as described in his Evidentiary Rulings in his Proposed Finding of Fact and Conclusions of Law. In particular, I refer to the Trustee's attempt to put into evidence and/ or into the record proposed Exhibits TX-375 (containing the documents supporting the Trustee's Summary Exhibits) and TX-380 through TX-400 (containing the Trustee's Demonstrative Exhibits, also labeled as TX DEM 001 through TX DEM 021). I believe the introduction of all of these documents violates Fed. R. Civ. Proc. 26, Fed. R. Evid. 1006 and this Court's Order dated January 18, 2019, for the reasons set forth below.

2. Pursuant to Federal Rule 26(a)(3), the rule governing pretrial disclosures, "[u]nless the Court orders otherwise, these disclosures must be made at least 30 days before trial." Fed. R. Civ. P. 26(a)(3). On January 18, 2019, this Court ordered that pretrial disclosures in the consolidated Nelsons' trial occur by May 1, 2019. *See* Adv. Pro. No. 10-04658, ECF No. 130 and Adv. Pro. No. 10-04377, ECF No. 126.

3. On May 1, 2019, the Trustee caused a proposed exhibit list, and a compact disc containing their proposed exhibits to be presented at trial to be delivered to me at 465 Park Avenue, New York, N.Y. 10022.

4. The Trustee's proposed exhibit list dated May 1, 2019 describes exhibit TX-375 as "Documents Supporting the Trustee's Summary Exhibits" and noting "Documents provided on CD." The Trustee's May 1, 2019 exhibit list did not list exhibits TX-380 through TX-400. *See* Trustee's Trial Exhibit List dated May 1, 2019 annexed hereto as **Exhibit A**.

5. Upon accessing the initial compact disc delivered on May 1, 2019, exhibit TX-375 was further denoted in the corresponding exhibits as a single page PDF titled "Documents

Supporting Trustee's Summary Exhibits Provided on Media." *See* TX-375, annexed hereto as **Exhibit B**.

6. A few minutes before the trial began at 10 a.m. on May 8, 2019, one of the Trustee's counsel handed me, for the first time, a compact disc and cover letter dated May 6, 2019 stating delivery by hand to Chaitman LLP at 465 Park Ave, New York, N.Y. 10022, from counsel to the Trustee, explaining that the disc contained an exhibit that was inadvertently left out of the May 1, 2019 compact disc. *See* Trustee's May 6, 2019 Cover Letter annexed hereto as **Exhibit C**.

7. During the trial, I had no ability to access the contents of the compact disc provided by the Trustee. At the conclusion of day one of the trial, which included the Trustee's direct examination of their witnesses, Bruce Dubinsky and Lisa Collura and after my cross examination of Bruce Dubinsky had already occurred, my paralegal, Amy Watson Sanchez, uploaded the contents of the compact disc and cover letter, dated May 6, 2019, to discover that the disc contained the documents supporting the Trustee's Summary Exhibits, TX-375. The documents were numbered from S0001 through S1108 and consisted of 4,114 pages which were not provided to the Nelsons prior to the trial in violation of Fed. R. Evid. 1006.

8. Also, during the trial, counsel to the Trustee handed me a binder containing the Trustee's Demonstrative Exhibits, labeled TX DM 001 through TX DM 021. I had never seen these documents before and obviously did not have the ability to confirm the accuracy of their contents against any source material because no source material was provided to me.

9. On June 17, 2019, the Trustee submitted a post-trial Exhibit List and Deposition and Trial Transcript Designations List with exhibits, which, for the first time, included the Trustee's Demonstrative Exhibits that were contained in the binder provided during trial (TX DEM 001 through TX DEM 021) and listed in the Trustee's post-trial Exhibit List as TX-380 through

TX-400. *See* Trustee's June 17, 2019 Cover Letter annexed hereto as **Exhibit D** and post-trial Exhibit List containing the Trustee's additional exhibits TX-380 through TX-400 annexed hereto as **Exhibit E**.

10. In sum, the documents supporting the Trustee's Summary Exhibits contained in the Trustee's exhibit TX-375 and the Trustee's Demonstrative Exhibits, TX-380 to TX-400 (TX DM 001 to TX DM 021) were not provided to the Nelsons in advance of trial as required by Fed. R. Civ. Proc. 26, Fed. R. Evid. 1006 and this Court's Order of January 18, 2019. The failure to adhere to the Court's order and the applicable rules obviously made it impossible for me to effectively cross-examine the Trustee's witnesses and to have a fair opportunity to represent my clients.

11. I declare under penalty of perjury 28 U.S.C. § 1746(2) that the foregoing is true and correct.

New York, New York
September 5, 2019

/s/ Helen Davis Chaitman

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